Supreme Court, U. S.
FILED
MAY 1 1975
MICHAEL RODAK, JR., CLERK

Supreme Court

[illegible] STATES

October Term, 1974

No. 74-[illegible]

[illegible] PETROLEUM COMPANY, a Corporation, *Petitioner*,

vs.

[illegible] M. MARTIN, as personal representative of [illegible] C. Martin, deceased, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE PETITIONER

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Subject Index

	Page
Opinions below	1
Jurisdiction	2
Statute involved	2
Questions presented	3
Statement of the case	3
Summary of argument	6
Argument	6
Conclusion	10

Table of Authorities Cited

Cases	Pages
Caribbean Federation Lines v. Dahl, 315 F. 2d 370 (5th Cir. 1973)	9
Casado v. Schooner Pilgrim, Inc., 171 F. Supp. 78 (D. Mass. 1959)	10
Collie v. Fergusson, 281 U.S. 51 (1930)	6, 7, 9
Escobar v. American Transportation Company, 503 F. 2d 271	5, 8
Forster v. Oro Navigation Co., 228 F. 2d 319 (2d Cir. 1955)	9
Isbrandtsen Co. v. Johnson, 343 U.S. 779 (1952)	6, 7
Mavromatis v. United Greek Shipowners Corp., 179 F. 2d 310 (1st Cir. 1950)	9
McConville v. Florida Towing Corp., 321 F. 2d 162 (5th Cir. 1963)	7
McCrea v. United States, 294 U.S. 23 (1935)	6, 7, 9
Mystic SS Co. v. Stromland, 21 F.2d 607 (4th Cir. 1927) cert. den. 276 U.S. 618	9
Prindis v. The SS African Pilgrim, 266 F. 2d 125 (4th Cir. 1959)	8, 9
Roeder v. Alcoa Steamship Co., 422 F. 2d 971 (3rd Cir. 1970)	7
Southern Cross SS Co. v. Firipis, 285 F. 2d 651 (4th Cir. 1960)	8
Swain v. Isthmian Lines, Inc., 360 F. 2d 81 (3rd Cir. 1966)	7, 8

Statutes	
28 U.S.C.:	
Section 1254(1)	2
46 U.S.C.:	
Section 596	2, 3, 4, 6, 9

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1974

No. 74-966

AMERICAN FOREIGN STEAMSHIP COMPANY, a Corporation, *Petitioner*,

vs.

LILLIAN M. MATISE, as personal representative of GRANVILLE C. MATISE, deceased, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The initial opinion of the United States District Court for the Northern District of California, unreported, appears in the Appendix at pp. 7-9. The initial opinion of the United States Court of Appeals for the Ninth Circuit (App. pp. 10-18) is reported at 488 F.2d 471. The judgment of the United States District Court for the Northern District of California without opinion appears in the Appendix at pp. 46-47. The order and judgment of the United

States Court of Appeals for the Ninth Circuit, unreported and without opinion, appear in the Appendix at p. 48.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on September 27, 1974. (App. p. 48). A timely Petition for Rehearing En Banc was denied on November 7, 1974. (App. p. 51). A Petition for a Writ of Certiorari was filed February 4, 1975 and was granted March 17, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254 (1).

STATUTE INVOLVED

R.S. §4529, 46 U.S.C. §596 provides as follows:

"The Master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after termination of the agreement under which he was shipped, or at the time said seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within 24 hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every Master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two

days pay for each and every day during which payment is delayed beyond the respective periods, which sums shall be recoverable as wages in any claim made before the Court; but this section shall not apply to Masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

QUESTIONS PRESENTED

1. Whether double-wage penalties (two days wages for each day of nonpayment) can be imposed under 46 U.S.C. §596 by the Court of Appeals without a trial or evidentiary hearing to permit a legal-factual determination whether the shipowner-employer acted with "sufficient cause" [the District Court having determined that the wages had been paid in full].

2. Whether the judiciary has discretion to assess the amount of a penalty under 46 U.S.C. §596 at something less than a mechanistic multiplication of the base wage by using the number of days of nonpayment (in this instance $29.58 times 996 days or $29,462.00) with no willfulness on the part of the employer or hardship to the seaman having been shown.

STATEMENT OF THE CASE

This suit was instituted by respondent's decedent (hereinafter "seaman" in the United States District Court for the Northern District of California against petitioner (hereinafter "shipowner") seeking (a) recovery of $510

alleged to have been illegally deducted by the shipowner from his earned wages, and (b) recovery under 46 U.S.C. §596 of a penalty of two days wages for each day wages are not paid in full. The basic facts, not in dispute, are as follows:

The seaman was employed as an oiler for a foreign voyage aboard the shipowner's vessel, the SS AMERICAN HAWK, and was discharged for good cause on March 19, 1969 in Saigon, South Vietnam due to his willful misconduct and neglect of duty. His discharge occurred in the presence of the vessel's Master, the United States Vice Consul and two United States Coast Guard officials. The vessel's Master was advised by the Vice Consul and Coast Guard officials that he was not obligated to pay the cost of the seaman's return transportation to the United States since the seamen had been discharged for good cause. Currency control regulations then prevailing in South Vietnam prohibited American merchant seamen from carrying United States currency ashore and required that the vessel's safe be sealed. An unsymmetrical fact of real life was that an airline ticket for return transportation to the United States from Saigon could at that time be purchased only with United States currency. It was therefore impossible to pay the seaman in full in U.S. dollars and enable him to himself buy his own airline ticket to return to the United States. However, to make possible the seaman's return by air to the United States with the approval of the Vice Consul, the vessel's Master was permitted by Customs authorities of South Vietnam to unseal the vessel's safe, withdraw $510 in United States currency and purchase the required airline ticket for the

seaman to return to the United States. On December 15, 1971 following trial to the District Court, judgment was entered in favor of the shipowner essentially on a finding that the seaman had been paid in full—no other issues were reached. (App. p. 9). The seaman appealed to the United States Court of Appeals for the Ninth Circuit which reversed the District Court's judgment. (App. p. 10). On remand to the District Court, judgment was entered in favor of respondent seaman in the sum of $35,306.27, the bulk of which amount represented the double-wage penalty from March 24, 1969 through December 15, 1971 (App. p. 47); the trial court construed the Court of Appeals' opinion as a pronouncement that the deduction was illegal and as a matter of law without sufficient cause and that the shipowner was therefore not entitled to a trial on the issue of sufficient cause. The trial court also follows its reading of the intervening opinion of the Court of Appeals for the Ninth Circuit in *Escobar v. American Transportation Company*, 503 F.2d 271 (9th Cir. 1974) [petition for certiorari now pending under docket no. 74-1184] in imposing the double-wage penalty mechanistically for the maximum period without consideration of circumstances. The shipowner appealed and on the seaman's motion for an expedited decision the Court of Appeals affirmed, describing the shipowner's appeal as "frivolous". (App. p. 48). The shipowner's request for a rehearing en banc, timely filed on October 11, 1974 (App. p. 49), was denied by the Court of Appeals on November 7, 1974 (App. p. 51).

SUMMARY OF ARGUMENT

The express language of 46 U.S.C. §596 and the decisions of this Court require an evidentiary hearing and a legal-factual determination that a refusal or neglect to pay was without sufficient cause in order to impose the penalty of two days wages for each day of elapsed time. The record is clear that the shipowner has not been permitted a trial on the question of sufficient cause. The double-wage penalty was imposed without any finding of arbitrary, unreasonable or willful conduct by the shipowner. The eventual determination of an improper deduction resulted in the mechanistic imposition of a penalty grossly disproportionate to the wages in dispute and without reflecting the equities supporting the shipowner's conduct (including the finding of the District Court on the first trial that the wages had been paid in full).

ARGUMENT

The Court of Appeals below treated the matter of "sufficient cause" as a question of law (apparently eliminated on a determination that a withholding from wages was technically improper) upon which the shipowner was not entitled to a trial on the merits. This is contrary to the express language of 46 U.S.C. §596 and the decisions of this Court in *Isbrandtsen Co. v. Johnson,* 343 U.S. 779 (1952); *Collie v. Fergusson,* 281 U.S. 51 (1930) and *McCrea v. United States,* 294 U.S. 23 (1935) all of which establish that liability for double-wage accrues, if at all, only upon a finding that a refusal or neglect to pay earned wages in a timely fashion was without sufficient

cause. This determination requires a legal-factual finding in consideration of all the evidence submitted. *McCrea v. United States,* 294 U.S. at p. 29; *McConville v. Florida Towing Corp.,* 321 F.2d 162, 168 (5th Cir. 1963), *Roeder v. Alcoa Steamship Co.,* 422 F.2d 971 (3d Cir. 1970). Liability for the double-wage penalty is not imposed without regard to fault of the shipowner. *Collie v. Fergusson,* 281 U.S. at p. 65. A finding of an unlawful withholding does not, in and of itself, establish the absence of sufficient cause for that withholding. *Isbrandtsen Co. v. Johnson,* 190 F.2d 991, 993 (3d Cir. 1952) affirmed 343 U.S. 779 (1952) and *Swain v. Isthmian Lines, Inc.,* 360 F.2d 81, 83 (3d Cir. 1966). The Trial Court never ruled on the propriety of the penalty or the question of sufficient cause for the shipowner's delay since it found no illegal withholding. (App. p. 9). The opinion of the Court of Appeals for the Ninth Circuit ignores the additional and separate legal-factual determination required for double-wage liability.

In addition to depriving the shipowner of a trial on the issue of "sufficient cause", no finding was ever made that the conduct was arbitrary or unreasonable. Liability for double-wages cannot be imposed where the refusal or neglect to pay was in some reasonable degree morally justified. *Collie v. Fergusson,* 281 U.S. 51, 56 (1930). Sufficient cause does not require a valid legal defense to the claim for wages since otherwise the phrase would be meaningless. Liability for the penalty provision of the statute requires a finding of some moral culpability of the shipowner. The record reveals the clear absence of any such finding in the proceedings below. On the contrary,

it is respectfully submitted that the record evidences the good faith, responsible and justifiable conduct of the shipowner in relying upon the instructions of the U.S. Vice Consul and Coast Guard officials in discharging the seaman and arranging for his repatriation. It is undisputed and confirmed by the Court of Appeals that the shipowner was as a matter of law not responsible for bearing the expense of the seaman's return transportation (App. p. 13); the penalty, greater than most criminal fines was, incredibly, triggered on the shipowner's undertaking to arrange transportation for the benefit of the seaman under unique circumstances precluding a cash payment to the seaman (App. pp. 11-12).

The mandate of the Court below as to the amount of the penalty represents an adoption of the views of the Court of Appeals for the Third Circuit in *Swain v. Isthmian Lines, Inc.*, 360 F.2d 81 (3d Cir. 1966).[1] See *Escobar v. American Transportation Company*, 503 F.2d 271 (9th Cir. 1974) [cert. pending under docket no. 74-1184]. A penalty in a sum grossly disproportionate to the deduction from wages was mechanically imposed. Other Courts of Appeals have expressly held that in assessing the amount of a Section 596 penalty the judiciary is vested with an inherent discretion to adjust the amount of the penalty to conform to the equities of the particular case. *Southern Cross SS Co. v. Firipis*, 285 F.2d 651 (4th Cir. (1960); *Prindis v. The SS AFRICAN PILGRIM*, 266 F.2d

[1]In denying any discretion to the Trial Court to adjust the penalty, the Court in *Swain* held that consideration of the equities supporting the shipowner were only proper in determining "sufficient cause". 360 F.2d at p. 87. In the instant case the Court of Appeals below did not even consider such equities in ruling on sufficient cause.

125 (4th Cir. 1959); *Mystic SS Co. v. Stromland*, 21 F.2d 607 (4th Cir. 1927) cert. den. 276 U.S. 618; *Mavromatis v. United Greek Shipowners Corp.*, 179 F.2d 310 (1st Cir. 1950); *Caribbean Federation Lines v. Dahl*, 315 F.2d 370 (5th Cir. 1973) and *Forster v. Oro Navigation Co.*, 228 F.2d 319 (2d Cir. 1955), affirming 128 F. Supp. 113 (S.D. N.Y. 1954).

Discretion to adjust the amount of a Section 596 penalty is consistent with and supportive of the earlier decisions of this Court in *Collie v. Fergusson*, supra, and *McCrea v. United States*, supra, setting forth the standards of reasonableness under which liability for double-wages would be imposed. The discretionary adjustment of the penalty to an amount which would reflect an equitable evaluation of the shipowner's conduct will promote the legislative policy of the statute intended to preclude an overreaching of the seaman and similarly prevent use of the statute by the seaman to obtain a windfall in a potentially unconscionable amount at the expense of the shipowner. Although the purpose of the statute certainly is not to encourage shipowners to contest wage claims, a violation of fundamental justice and due process occurs when, as in this case, penalties are mechanistically imposed by a Court of Appeals against a shipowner who successfully defends a wage claim in the District Court on the good faith belief, confirmed by the District Court's findings, that all sums owing to the seaman have been paid. To hold that §596 presents a mandatory command to the judiciary to impose the double-wage penalty in its full amount allows seamen to catch at penalties in an unconscionable amount when, as in this case, he received all sums

to which he was legally entitled. As stated by Judge Aldrich in *Casado v. Schooner Pilgrim, Inc.*, 171 F. Supp. 78, 80 (D. Mass. 1959) ". . . I do not believe that to say seamen are the favorites of admiralty should be to create a corresponding class of villains [i.e. shipowners] on whom to impose a new type of liability."

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals below should be reversed.

Respectfully submitted,

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Dated: April 29, 1975.